

# Calendar No. 1332

77TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 1291

## JAMES WARREN

APRIL 30, 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

## REPORT

[To accompany H. R. 5658]

The Committee on Claims, to whom was referred the bill (H. R. 5658) for the relief of James Warren, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1947, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1947, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5658) for the relief of James Warren, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Line 6, strike out the figures "\$1,500" and insert in lieu thereof the figures "\$750".

The purpose of the proposed legislation is to pay to James Warren the sum of \$750 for personal injuries sustained as result of a wound he received from a bullet fired in target practice at Fort Monroe, Va., on April 14, 1941, while he was serving as deck hand on the boat *John T. Powell*.

### STATEMENT OF FACTS

On April 14, 1941, James Warren, while serving as a deck hand on the boat *John T. Powell*, was shot by a .30-caliber bullet fired by a soldier at target practice, at Fort Monroe, Va.; that the bullet entered the anterior surface of the middle third of Warren's leg, passed through the soft tissue and central portion of the tibia, and emerged from the posterior aspect; that none of the major blood vessels were divided, sensation and muscular action were unaffected, and there was no fracture. He was treated at the station hospital, Fort Monroe, Va., on April 14, 1941, and at the Marine Hospital, Norfolk, Va., from April 15 until discharged May 15, 1941.

The War Department, in a report dated December 26, 1941, concludes:

"In view of the foregoing, if Congress shall determine that some relief is appropriate, the War Department will interpose no objection thereto but urges that in no event should an amount in excess of \$500 be granted, inasmuch as the entire

expense of Warren's treatment has been borne by the Government, he was incapacitated for only 1 month, his monetary loss was negligible, and he suffered no serious injury or permanent disability."

Although the War Department contends that he was incapacitated for only 1 month, it appears that, upon advice of the hospital director, he was told to remain off his leg for 1 month, and not to attempt any work for 6 months, and as of September 26, 1941, he was still unable to do any work because of the continued pain in his right foot. Your committee feel that the amount recommended by the War Department is too small, and recommend that the bill, in the amount of \$750, do pass.

WAR DEPARTMENT,  
Washington, December 26, 1941.

HON. DAN R. MCGEHEE,  
*Chairman, Committee on Claims,  
House of Representatives.*

DEAR MR. MCGEHEE: Careful consideration has been given to the bill, H. R. 5658, Seventy-seventh Congress, first session, for the relief of James Warren, which you transmitted to the War Department under date of October 2, 1941, with request for all available information and the views of the Department relative thereto. Enclosed are photostatic copies of papers on file deemed material to the facts and a decision on the bill. Delay in submitting this report was occasioned by the necessity of obtaining the necessary evidence from the field after receipt of your request. That evidence has just been received.

It is proposed in this bill to pay James Warren the sum of \$1,500 in full satisfaction of all claims against the United States on account of injury, pain, suffering, and money loss sustained by him while he was serving as a deck hand on the boat *John T. Powell*, resulting from a wound from a bullet fired on April 14, 1941, by a soldier in target practice at Fort Monroe, Va.

The evidence furnished by the medical authorities shows that a .30-caliber bullet entered the anterior surface of the middle third of Warren's leg, passed through the soft tissue and central portion of the tibia, and emerged from the posterior aspect; that none of the major blood vessels were divided, sensation and muscular action were unaffected, and there was no fracture. He was treated at the station hospital, Fort Monroe, Va., on April 14, 1941, and at the Marine Hospital, Norfolk Va., from April 15 until discharged May 15, 1941, at which time the wound was thoroughly healed, he was walking without difficulty and without the use of any support, was considered recovered and it appeared that there should be no future or permanent disability. Warren testified that at the time of the injury his compensation was \$15 a week, room and board.

The evidence further shows that at the time the injury was incurred Warren was on an oyster boat, commanded by Capt. J. K. Coates, on Chesapeake Bay about three-quarters of a mile from shore and about halfway between the sea wall at Fort Monroe, Va., and Buckroe Beach. Target practice was being conducted on the rifle range at the north end of the sea wall. Proper safety zones had been established and the testimony of military personnel is to the effect that no boat came within the observed range of fire while target practice was being conducted.

It appears that at the time of the injury Warren was sitting on the right front corner of the gear box at the wheel in the rear of the boat; that both he and Captain Coates had heard the firing of guns for some time before the injury; that one or more bullets had passed over their heads and one or more had fallen short of the boat before he was injured; that Captain Coates had not felt it necessary to go down into the cabin of the boat because he assumed that the firing on the shore would cease as the boat passed; and that when asked if they continued their course without alteration directly toward the point where firing was being done, Captain Coates stated, "Sure, I've been plowing these waters for 30 years, and every time we get near where they're firing, it stops; we always barge right through."

Based upon the foregoing statement it would appear that Captain Coates proceeded into a hazardous area in the face of known danger and that he was negligent in failing to exercise due care or precaution for the safety of his crew.

Considering the legal liability under such circumstances, the courts have held that injury to a seaman during the course of his employment upon a vessel in navigable waters, caused by the negligence of a superior officer, is a maritime tort within the jurisdiction of admiralty (*Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, 62 L. ed. 1171, 38 S. Ct. 501; and see 1 Am. Jur. 569 et seq., Admiralty,

sec. 49; 2 C. J. S. 114 et seq.). Under the rule above stated it would appear that Warren has a remedy at law in personam against Capt. J. K. Coates and the owner of the boat, as well as in rem against the boat.

If the injury could be attributed to negligence of military personnel in failing to employ adequate safety measures, an action would also be against the United States but for its immunity as a sovereign. In view of the foregoing, if Congress shall determine that some relief is appropriate, the War Department will interpose no objection thereto but urges that in no event should an amount in excess of \$500 be granted, inasmuch as the entire expense of Warren's treatment has been borne by the Government, he was incapacitated for only 1 month, his monetary loss was negligible, and he suffered no serious injury or permanent disability.

Sincerely yours,

HENRY L. STIMSON,  
*Secretary of War.*

STATE OF VIRGINIA,

*County of Northampton, to wit:*

I, James Warren, being first duly sworn, do hereby depose and make oath as follows:

That on the 14th day of April 1941, I was employed by Capt. J. K. Coates, of Bridgetown, Va., as a deck hand on the boat *John T. Powell*; that on or about 11 a. m. of April 14, 1941, I left Cape Charles aboard the boat named, and at the time we were going to the James River to buy a load of oysters for Captain Clarke to be planted in Hungars Creek. I was steering the boat all the way from Cape Charles until we came near Buckroe Beach, just above Fort Monroe. Between Buckroe Beach and Fort Monroe about 3 p. m., off what is known as the Sand Hills, I was sitting on the starboard side of the wheel box, facing westward, steering a southwest by south course, when I saw the water splash between me and the Sand Hills, and it looked to me like the splash was caused by a bullet hitting the water, and at that time I remember remarking to Captain Coates that I hoped the fellow who was doing the shooting could see us and knew what he was doing. About a minute after that a bullet hit the front part of my leg about half way between my knee and ankle and went clear through the bone of my leg and lodged several inches in the framework of the wheel box (which was of white oak) behind my leg.

The bullet was afterward dug out of the wheel box by the officer from Fort Monroe. Immediately after that happened I went down into the cabin and told the captain that I had been hit by a bullet. He then took the wheel. After I came out of the cabin there were several more shots fired, and I was afterward told by Captain Coates that he had picked up from the deck of the boat two other bullets identical with the one causing my injury. Within a few minutes my leg began to pain me intensely and the captain then took the boat on to Old Point where he docked the boat and reported the accident to the officers at Fort Monroe. I was given first aid aboard the boat and then taken bodily to the hospital at Fort Monroe. By that time I was unable to walk a step, and was kept there until April 15, 1941, on which day I was transferred to the Marine Hospital at Norfolk where I remained until May 15, 1941. On that date I was discharged from the hospital but was unable to walk without the use of a cane. My wife and son came to the hospital and had to help me walk to the streetcar and before I left the doctors at the hospital told me to remain off the leg for several months and not to attempt to do any work for 6 months. Thus far I am still unable to work and can walk only by use of a cane that was given me at the hospital. There has not been a single day since I was injured that I have been free from pain in my leg and foot. The leg at times does not pain me but my foot gives me trouble almost continuously from this accident.

I am 61 years old, have a wife and five children dependent upon me for support, four of these children being in school each day, and I have not been able to earn a cent for them since April 14, 1941. I have been sailing the waters of the Chesapeake Bay and the creeks adjacent thereto since April 15, 1898, and during that time have been the master of two boats. At the time I was injured my salary was \$15 weekly, exclusive of board and room.

Given under my hand and seal this 26th day of September 1941.

JAMES T. WARREN.

Subscribed and sworn to before me this 26th day of September 1941.

[SEAL]

S. R. TURLINGTON,  
*Notary Public.*

My commission expires October 27, 1941.

## ABSTRACT FROM CLINICAL RECORD, SEPTEMBER 24, 1941

Name: James Warren. Occupation: Deck hand. Age: 61 years. Last vessel: *John T. Powell*.

Furnished hospital care from April 15 to May 15, 1941. Diagnosis: Wound, gunshot of middle of right leg, through tibia.

## CONDITION OF PATIENT UPON ADMISSION

This patient was admitted to the hospital on April 15, 1941, with a history of being shot accidentally in the right leg on April 14, 1941, at 3 p. m., while passing Fort Monroe, Va. He stated that he was shot by a stray bullet from Army practice.

Examination revealed two perforated wounds, one on the anterior and one on the posterior aspect of the right lower leg, apparently made by a bullet.

X-ray examination of the right leg showed no fracture but in the shaft of the right tibia in the mid portion there was an elliptical area of decreased density measuring 5 by 8 millimeters apparently due to a bullet wound.

He was treated in the hospital by rest and elevation of the leg with the use of crutches and later a cane.

At the time of discharge he was walking without difficulty and without the use of any support, apparently not disabled from the penetrating gunshot wound of the right tibia.

Patient was discharged on May 15, 1941, no further hospitalization necessary. It was anticipated that there would be no permanent disability as a result of the injury.

By direction of the medical officer in charge.

[SEAL]

R. K. MADDOCK,

Passed Assistant Surgeon,

United States Public Health Service, Clinical Director.

UNITED STATES MARINE HOSPITAL,  
Norfolk, Va.

